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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 111205721-1719-01]

RIN 0648-XA741

Endangered and Threatened Wildlife; 90-Day Finding on Petition to List the Barndoor Skate, Winter Skate and Smooth Skate under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, NMFS, announce a 90-day finding for a petition to list the barndoor skate (Dipturus laevis), winter skate (Leucoraja ocellata) and smooth skate (Malacoraja senta) under the Endangered Species Act (ESA). We find that the petition does not present substantial scientific information indicating the petitioned actions may be warranted. Accordingly, we will not initiate a review of the status of these species at this time.

FOR FURTHER INFORMATION CONTACT: Kim Damon-Randall, NMFS, Northeast Regional Office (978) 282-8485 or Maggie Miller, NMFS, Office of Protected Resources (301) 427-8403. The petition is available electronically at the NMFS website at http://www.nero.noaa.gov/prot_res/CandidateSpeciesProgram/csr.htm. A list of references is available upon request.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 2011, we received a petition from WildEarth Guardians and Friends of Animals (the petitioners) requesting that we list thorny skate, barndoor skate, winter skate and smooth skate as threatened or endangered. In the alternative, the petitioners request that we list any and all distinct population segments (DPSs) of these species that may exist, and in particular the petitioners requested that we list the United States population of thorny skate as a threatened or endangered DPS.

The joint USFWS/NMFS petition management handbook (http://www.nmfs.noaa.gov/pr/pdfs/laws/petition_management.pdf) states that if we receive two petitions for the same species and a 90-day finding has not yet been made on the earlier petition, then the later petition will be combined with the earlier petition and a combined 90-day finding will be prepared. When we received the petition from WildEarth Guardians and Friends of Animals, we had already received a petition from the Animal Welfare Institute for thorny skate. Therefore, we combined the petitions for thorny skate and issued a single 90-day finding addressing both petitions for that species. Given that, this 90-day finding will address the remaining three skate species included in the petition from WildEarth Guardians and Friends of Animals. The petitioners state that there can be no reasonable dispute that the available information, in particular the International Union for Conservation of Nature's (IUCN) assessment that each of the petitioned species is "Critically Endangered" or "Endangered," indicates that listing these skates as either threatened or endangered may be warranted.

ESA Statutory Provisions and Policy Considerations

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or

commercial information indicating that the petitioned action may be warranted. ESA implementing regulations define substantial information as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In determining whether substantial information exists for a petition to list a species, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (16 U.S.C. 1533(b)(3)(A)), and the finding is to be published promptly in the Federal Register. If we find that the petition presents substantial information indicating that the requested action may be warranted, section 4(b)(3)(A) of the ESA requires the Secretary of Commerce (Secretary) to conduct a status review of the species. Section 4(b)(3)(B) requires the Secretary to make a finding as to whether or not the petitioned action is warranted within 12 months of the receipt of the petition. The Secretary has delegated authority for these actions to the NOAA Assistant Administrator for Fisheries.

To be considered for listing under the ESA, a group of organisms must constitute a “species,” which is defined to also include subspecies and, for any vertebrate species, any DPS that interbreeds when mature (16 U.S.C. 1532(16)). On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (collectively, the “Services”) adopted a policy to clarify their interpretation of the phrase “distinct population segment of any species of vertebrate fish and wildlife” (61 FR 4722). The joint DPS policy describes two criteria that must be considered when identifying DPSs: (1) the discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the

population segment to the remainder of the species (or subspecies) to which it belongs. As further stated in the joint policy, if a population segment is discrete and significant (i.e., it is a DPS), its evaluation for endangered or threatened status will be based on the ESA's definitions of those terms and a review of the five factors enumerated in section 4(a)(1) of the ESA.

The ESA defines an endangered species as “any species which is in danger of extinction throughout all or a significant portion of its range,” and “threatened” if it is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range” (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Under section 4(a)(1) of the ESA, a species may be determined to be threatened or endangered as a result of any one of the following factors: (A) present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Many petitions, such as this one, identify risk classifications made by other organizations or agencies, such as the IUCN, the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or State statutes may be informative, but the classification alone may not provide the rationale for a positive 90-day finding under the ESA. Thus, when a petition cites such classifications, we will evaluate the source information that the classification is based upon, in light of the standards on extinction risk and impacts or threats discussed above.

Species Description

Barndoor skate are found in the Northwest Atlantic in the Gulf of St. Lawrence, Gulf of Maine and as far south as North Carolina. They are most abundant in offshore Gulf of Maine (Canadian waters), offshore Georges Bank, and Southern New England waters, with very few documented in inshore waters or in the Mid-Atlantic Region (New England Fisheries Management Council (NEFMC), 2009). Minimum length of barndoor skate caught in the Northeast Fisheries Science Center (NEFSC) surveys is 20 cm total length (TL) (8 in) and the largest individual caught was 136 cm TL (54 in). It has a broad body with pointed fins and snout and a relatively short tail with three rows of spines. Its primary distinguishing feature is a dark line that extends from the snout to the base of the tail. It has been estimated that barndoor skate reach maturity at 6-7 years of age.

Smooth skate occur from the Gulf of St. Lawrence and the Labrador shelf to as far south as South Carolina in the Northwest Atlantic Ocean. They are most abundant inshore and offshore Gulf of Maine and along the 100 fathom edge of Georges Bank, with very few documented in Southern New England or the Mid Atlantic (NEFMC, 2009). They are found in water depths of 45 to 900 m. The median length of smooth skate in the survey catch shows no trend over the full survey time series and is currently at about 40 cm TL (16 in). It has been estimated that they reach sexual maturity as early as 5 years old but possibly as late as 8 to 10 years. The distinctive feature of smooth skate is an irregular row of small thorns which run along its back and along the first half of its tail.

Winter skate occur from the south coast of Newfoundland and the southern Gulf of St. Lawrence to Cape Hatteras. They are most abundant inshore and offshore Georges Bank and Southern New England with lesser amounts in the Gulf of Maine or the Mid-Atlantic (NEFMC,

2009). They are found in water depths up to 90 m. Median length of winter skates increased from the mid 1990s through 2002 and then declined slightly to about 45 to 52 cm TL (18 – 20 in). The age at maturity is estimated at 7 years. The snout and pectoral fins of the winter skate are blunt and rounded. Other common names for winter skate include big skate, spotted skate and eyed skate.

Analysis of Petition and Information Readily Available in NMFS Files

In the following sections, we present information from the petition and readily available in our files to determine whether this information leads a reasonable person to conclude that listing under the ESA may be warranted due to any one or more of the factors listed under section 4(a)(1) of the ESA. A separate discussion is included for each of the three skate species included in the petition.

Abundance

The petition presents limited information on abundance of the skate species. It cites the IUCN classifications and places a great deal of weight on these. Additional information on biomass is contained in the discussion of the second ESA factor, overutilization for commercial, recreational, scientific or educational purposes, for each of the three species.

Barndoor Skate Abundance

The petition states that the IUCN lists barndoor skates as “endangered” throughout their range. The petitioners state that the biomass of barndoor skates declined throughout their range by 96-99 percent from the 1960s to the 1990s, most likely as a result of mortality as bycatch. They state that the population has experienced a slight increase in recent years and that the NEFSC has therefore concluded that it is neither overfished, nor experiencing overfishing. They

state that although the potential increase gives conservationists some reason to be optimistic, researchers have suggested that it is difficult to tell whether the data demonstrate actual population resurgence. The petitioners cite a reference from the year 2000 for this information; however, since 2000, additional data has become available from both the NEFSC Spring and Autumn Bottom Trawl surveys that show that the population has continued to increase. The petitioners also state that while the barndoor skate is not overfished and not experiencing overfishing (according to the 2008 NEFSC survey), the 2005 biomass index is still 50 percent of the peak biomass observed during the 1960s when the species was first surveyed. In addition, the petitioners note that the average biomass index of barndoor skate is well below the target biomass index established by the NEFSC.

The 2008 Stock Assessment and Fishery Evaluation (SAFE) Report states that in the NEFSC spring survey (1968-2006), the annual total catch of barndoor skate ranged from 0 fish (several years during the 1970s and 1980s) to 196 fish in 2006. The NEFSC autumn survey (1963-2005) exhibited a similar increasing trend. Recent spring catches equated to 0.6 fish or 1.7 kg per tow in 2006 and recent autumn catches equated to 0.4 fish or 1.0 kg per tow in 2005. The 2008 SAFE Report states that, given this data, barndoor skate appear to be in a rebuilding phase that began in the 1990s. Since 1990, both spring and autumn survey indices have steadily increased, with the spring survey at the highest value in the time series and the autumn survey nearing the peak values found in the 1960s. In 2007, the NEFSC autumn survey showed a decline in biomass which reduced the 3-year moving average; however, it remains above the biomass threshold and thus, the barndoor skate is not considered to be overfished. In fact, the survey biomass index for barndoor skate has been above the overfished biomass threshold since

2004. The 2008-2010 NEFSC autumn average survey biomass index of 1.11 kg/tow is above the biomass threshold reference point (0.81 kg/tow), and thus, the species is not overfished but is not yet rebuilt to biomass at maximum sustainable yield (Bmsy). The 2008-2010 average index is above the 2007-2009 index by ten percent; therefore, as indicated previously, overfishing is not occurring. In addition, recent catches of barndoor skate include individuals as large as those recorded during the peak abundance of the 1960s, and recent survey data show an increase in the number of fish between 40 and 80 cm TL, common lengths during the 1960s (NEFMC, 2009).

Previous ESA Action for Barndoor Skate

On January 15, 1999, we published in the Federal Register a notification soliciting comments and reliable documentation on species we were considering adding to the Endangered Species Act (ESA) candidate species list (64 FR 2629; January 15, 1999). In that publication, we listed barndoor skates (Dipturus laevis) as one of the species under consideration. On March 4, 1999, we received a petition from GreenWorld to list barndoor skates as endangered or threatened under the ESA and to designate Georges Bank and other appropriate areas as critical habitat. GreenWorld requested that they be listed immediately, as an emergency matter, as well as similar looking species of skates to ensure the protection of barndoor skates. On April 2, 1999, we received a second petition from the Center for Marine Conservation (CMC), now the Ocean Conservancy, to list barndoor skates as an endangered species. We considered the second petition a comment on the first petition submitted by GreenWorld. On June 23, 1999, after considering all available information, we published our revised list of candidate species, which included barndoor skates (64 FR 33466; June 23, 1999). In that same month, we published a finding that the petition action to list barndoor skates under the ESA might be warranted (64 FR

33040; June 21, 1999). We then initiated a review of the status of the species to determine if listing barndoor skates under the ESA was warranted. As part of that review, we conducted a stock assessment of the species using the information published in the SAFE report. Instead of preparing a separate stand alone status review document, we referenced the SAFE report as the best available data on the status of the species.

On September 27, 2002, after reviewing the best scientific and commercial information available, we published a determination that listing barndoor skates as either threatened or endangered under the ESA was not warranted (67 FR 61055; September 27, 2002). Survey data showed an increase in abundance and biomass, expansion of known areas where barndoor skates were encountered, an increase in size range, as well as an increase in small barndoor skates collected. These data are not consistent with a species in danger of extinction. Furthermore, the most significant identifiable threat to the species, overfishing, had been reduced by regulatory measures affecting several northeast fisheries. In addition to the regulatory measures already in place, NMFS was working at that time with the New England Fishery Management Council (NEFMC) to develop the Skate Fishery Management Plan (FMP). Due to remaining uncertainties regarding the status and population structure of barndoor skates, NMFS determined that retaining the species on the agency's list of candidate species (subsequently, changed to species of concern list) was warranted until additional scientific and commercial data became available (67 FR 61055; September 27, 2002).

Due to new information available since 2004, a review was initiated in 2009 to present the best scientific and commercial data available to investigate the status of the species relative to the criteria for remaining a species of concern. The most recent research on life history

characteristics and population dynamics of barndoor skates has revealed that the rebuilding estimate is more rapid and suggests the species may be more resilient to exploitation than previously believed (Barndoor Skate Internal Status Review, 2009). In addition, the consistent rise in biomass as well as the large increase in size ranges, coupled with management in other fisheries and the Skate FMP, supports the continued rebuilding of barndoor skate stocks. Given the newly acquired information presented above, it was determined that barndoor skates no longer met the criteria for a species of concern and inclusion on the species of concern list was no longer warranted. Thus, the species was removed from the list in 2009.

Smooth Skate Abundance

The petitioners state that the IUCN has designated smooth skate as “endangered” throughout their range. The IUCN assessed smooth skate as “near threatened” in U.S. waters in 2004. The petitioners state that the NEFSC biomass index for smooth skate has declined continuously from the 1970s to the 1980s, partially as a result of mortality from bycatch. They state that the autumn survey index has stabilized at about 25 percent of the peak observed during the 1970s. The petitioners state that in 2008, the NEFSC determined smooth skates to be overfished but not subject to current overfishing. They state that the three-year moving average of the biomass index declined by over 22 percent between 2004 – 2006 and 2005 – 2007. The data presented by the petitioners for the most recent 3-year average biomass are out of date. In addition, the petitioners compare this out-dated information to an “old” reference point (0.31 kg/tow) and not the updated biomass target and thresholds which have been adopted by the Data Poor Stocks Working Group (DPSWG) and Amendment 3 to the Skate FMP in 2009.

The 2008 SAFE Report states that the total annual catch of smooth skate in the NEFSC

spring surveys ranged from 30 fish in 2000 to 71 fish in 2006. The total annual catch of smooth skates in the NEFSC autumn surveys ranged from 55 fish in 2000 to 44 fish in 2006. Indices of smooth skate abundance and biomass from the NEFSC surveys peaked during the early 1970s for the spring series and the late 1970s for the autumn series. NEFSC survey indices declined during the 1980s before stabilizing during the early 1990s at about 25 percent of the autumn and 50 percent of the spring survey index values of the 1970s. In 2008, smooth skate was determined to be overfished (in accordance with the Northeast Skate Complex Fishery Management Plan, referred to hereafter as the Skate FMP) based on the 2007 autumn survey data, because the 3-year moving average dropped below the threshold. However, overfishing was not occurring (as defined by the Skate FMP) because the consecutive 3-year moving average of the biomass indices did not exceed the maximum threshold of 30 percent which, according to the FMP, defines when overfishing is occurring. Since 2008, new data has become available which has changed the overfished status of the smooth skate species. The 2008-2010 NEFSC autumn average biomass index of 0.16 kg/tow is now above the biomass threshold reference point (0.145 kg/tow) and thus, the species is not overfished but is not yet rebuilt to Bmsy. The 2008-2010 index is above the 2007-2009 index by 22 percent; therefore, overfishing is not occurring. The biomass target for smooth skate (0.27 kg/tow) is an order of magnitude lower than most other skates in the complex.

The smooth skate's low relative abundance in U.S. waters is due to the fact that its center of abundance appears to be in Canadian waters (Kulka et al., 2006). The species is not distributed evenly within its global range (IUCN, 2004). Following declines in the 1970s, the relative abundance of some of these population concentrations has increased significantly in

recent years, while others have been stable or slightly declining (Kulka et al., 2006). Minimum estimates of smooth skate abundance in these regions from Canadian trawl surveys range from 194,000 – 23,000,000 fish for 1995-2006, depending on the selected survey (Kulka et al., 2006).

Winter Skate Abundance

The petitioners state that the IUCN has designated winter skates as “endangered” throughout their range. A regional “vulnerable” listing was recommended for the United States. The petitioners state that the NEFSC declared winter skate overfished in 2007. They state that although the most recent survey indicates that winter skate are not currently subject to overfishing as defined in the FMP, the 3-year moving average of winter skate biomass index has declined steadily over the past decade and declined four percent between 2004-2006 and 2005-2007. The data presented by the petitioners for the most recent 3-year average biomass are 3 years out of date. In addition, the petitioners reference the old biomass index reference point (6.46 kg/tow) and not the updated biomass target and thresholds adopted by the DPSWG and Amendment 3 to the Skate FMP in 2009. The petitioners state that the effects of the directed take for wings and take as bait, combined with bycatch mortality from trawling, have led to a dramatic decline in the winter skate population, and state that 62 percent of the New England population has been lost since the 1980s.

Unlike thorny and smooth skates, the winter skate’s center of abundance is in U.S. waters and they range as far south as North Carolina. Winter skate is the target species of the Northeast U.S. skate wing fishery, representing approximately 95 percent of skate wing landings (NEFMC, 2009). The petitioners incorrectly claim that winter skate biomass is “currently only 38 percent of the peak biomass observed during the 1980’s.” Based on survey data through fall 2010, the

biomass of winter skate is actually at its highest level since the mid-1980s and well above its target biomass of 5.60 kg/tow. The petitioners appear to only reference survey biomass data through 2007, when winter skate biomass was significantly lower. NMFS declared winter skate overfished in 2007, but a subsequent stock assessment concluded that the species had not actually declined below its biomass threshold (DPWG, 2009). Winter skate biomass exceeded its target level of 5.60 kg/tow in 2009, and is currently at 9.64 kg/tow (72 percent above the target). Winter skate is not overfished and overfishing is not occurring as defined in the Skate FMP. This stock appears to have rebuilt despite skate landings being at the highest levels on record (2008-2010 average annual landings = 20,371 mt). The fact that this stock has increased in biomass despite increases in harvest, and continues to support a viable fishery, suggests that this species is not at risk of extinction now or in the future.

In Canadian waters, winter skate is primarily a bycatch species. In 2005, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) released a status assessment on four “designatable units” (DU) of winter skate. Based primarily on life history characteristics and the low frequency of occurrences in catches winter skate, COSEWIC designated the southern Gulf of St. Lawrence DU as Endangered, the eastern Scotian Shelf as Threatened, the Georges Bank-Western Scotian Shelf/Bay of Fundy as of “Special Concern” and the Northern Gulf-Newfoundland population as “Data Deficient” (Swain et al., 2006).

The 2008 SAFE Report examined the distribution of winter skate in Canadian waters using research surveys and commercial fishery data by Simon et al. (2003). No trend in abundance was found in the Georges Bank region, and the series average was 1.9 million individuals. Declines were evident in the Southern Gulf of St. Lawrence and on the Scotian

Shelf. In recent years, in addition to fishing mortality, natural mortality from seal predation has begun to have an impact on winter skates in Canada (Benoit et al., 2011).

Analysis of ESA Section 4(a)(1) factors for Barndoor, Smooth and Winter Skates

The petition presents information on the five ESA factors for all three species, and the petitioners conclude that all three species are threatened by direct and indirect exploitation.

The petitioners state that the life history of these species, which make them especially vulnerable to exploitation, argue even more urgently for the adoption of strong regulatory protections provided by the ESA.

The petition makes similar arguments for all three skate species so they will all be addressed together first, followed by species-specific information and analysis. For all three species, the petitioners claim that the use of groundfish trawling gear degrades benthic habitat structure which affects the availability of the skate's prey as well as the skate's ability to avoid predators. This is a very general claim and no information is presented or otherwise available to us to indicate that the prey of barndoor, smooth and/or winter skate has been affected in such a manner as to pose a significant threat to the species. The petitioners further state that because smooth skates are prey specialists, they may be even more sensitive to habitat alteration than other skates. While this may be true, the petitioners do not present substantial information indicating that habitat degradation has caused or will cause smooth skate to be threatened or endangered now or in the future.

Regarding overutilization for commercial, recreational, scientific or educational purposes, the petitioners claim that landings of all three skate species have grown since the 1980s and state that the directed skate take will likely continue to increase as use of other groundfish

becomes more restricted and less profitable. This claim does not take into account that Amendment 3 to the Skate FMP has set acceptable biological catch and annual catch targets. It also does not take into account that in order to land skates, a fisher must use a groundfish day-at-sea, and that there have been effort reductions in the groundfish fleet under the Multispecies FMP. Groundfish permit holders that participate in sectors operate under sector-specific catch entitlements. The implications of reduced fishing activity for groundfish on the catch of skates have not yet been analyzed.

The petitioners raise concerns over the discard mortality rate (the percentage of skates that die after they are thrown overboard) which they state could be as high as 56 percent. Research on the discard mortality rates of winter, little, thorny, and smooth skates in bottom trawl gear is currently being conducted by Drs. John Mandelman (New England Aquarium) and James Sulikowski (University of New England) (NOAA Saltonstall-Kennedy Grant Program). Preliminary data provided to NMFS and the Skate Plan Development Team (PDT) indicate that discard mortality rates are significantly lower than the 50 percent previously assumed by the NEFSC. Based on new research, the 2008 to 2010 discard mortality rate for little and winter skates caught by trawl gear was reduced from 50 percent to 20 and 12 percent, respectively. As a result, the skate discard rate (the percentage of the total annual catch represented by dead discards) was reduced from 52 to 36 percent. (NMFS, 2011).

The petitioners further state that as long as the skate bait and wing fishery continues to target the smaller little and winter skates, it will continue to threaten barndoor and smooth skates as well. This assumes that the fishery operates in areas where barndoor and smooth skate occur; however, Amendment 3 to the Skate FMP shows that the bait fishery operates in an area where

mostly little and winter skate occur, and not barndoor and smooth skate.

The petitioners state that even a normal rate of predation could have a significant impact on the already depleted barndoor, smooth and winter skates, and they state that we should fully consider the risks posed to these species' populations from predation in assessing their status. Similarly, the petitioners state that we should fully consider the risks posed to the survival of these three skates by parasitism in assessing the status of the three species. Information presented by the petitioner and otherwise available to us does not indicate that any of these three species of skates are threatened or endangered due to predation or disease.

Regarding inadequacy of existing regulatory mechanisms, the petitioners state that because the species-specific reporting requirements are not being enforced, the prohibition on landing and possessing barndoor and smooth skates is essentially meaningless. The potential impact of the lack of species-specific reporting in the skate fishery on the survival of barndoor and smooth skates is overstated. While the historical lack of species-specific trends in landings and discards has hampered stock assessment efforts, recent data collection efforts have greatly improved our understanding of the species composition of the landings. Over the last several years (2005 to 2010), the prohibitions on thorny, barndoor, and smooth skates have been estimated to be approximately 98 percent effective (NMFS Northeast Region, unpublished data). The petitioners argue that the existing regulatory mechanisms are inadequate to protect smooth skates; however, port sampling of skate wing landings conducted by NMFS indicates that from 2005-2010 prohibited species occurred in only approximately two percent of landings. Of 59,879 skate wings sampled during this period, only three wings were identified as smooth skate (NMFS, unpublished data). The smooth skate's small body size makes it generally non-

marketable for the skate wing fishery, and it is not likely to occur in bait skate landings because this fishery primarily operates in southern New England waters, south of the smooth skate's range. While bycatch and discards in the Gulf of Maine may be the primary source of fishing mortality for this species in U.S. waters, recent analyses show that the overlap between fishing effort and smooth skate distribution is minimal (NEFMC, 2011). However, overlap is likely more prevalent in Canadian waters (Kulka et al., 2006).

Regarding smooth skates, the petitioners raise particular concern that the prohibition on landing smooth skates is limited to the Gulf of Maine Regulated Mesh Area, which only covers the Gulf of Maine. While this is true, it is appropriate because the vast majority of the U.S. smooth skate biomass is within the Gulf of Maine Regulated Mesh Area. Finally, the petitioners raise concern that the FMP only requires vessels to report discarded skate by size category of small or large. The statement is correct for Vessel Trip Reports (VTRs). For the purposes of VTRs, vessels only report the weights of large and small skates discarded. However, VTR data are not used to estimate the magnitude or species composition of skate discards. This is done using at-sea observer data to estimate discard/kept ratios. Species composition of discards is estimated through the NMFS stock assessment process, and combines observer and trawl survey data for accurate discard information.

In Canada, when the skate fishery first occurred in 1994, winter skate constituted the majority of skates caught (over 2,000 mt). In Canada, winter skate landings are under quota control in the Scotian Shelf (the only directed fishery in the Northwest Atlantic). The total allowable catch was reduced from 2000 mt in 1994 to 300 mt in 2001 and 200 mt in 2002 (DFO 2007). This fishery was closed in April 2006 to protect the winter skate population.

Regarding other natural or manmade factors affecting the continued existence of barndoor, smooth, and winter skates, the petitioners note that the life history characteristics of large skates make them especially vulnerable to exploitation. They state that because of their life history characteristics, these skates are not likely to recover quickly from their current low levels and are more susceptible to exploitation. The petitioners do not present substantial information to indicate why or how these factors result in the species possibly warranting listing as either threatened or endangered.

As noted above, we conducted a review of the status of barndoor skate in 2009 and concluded that the most recent research on life history characteristics and population dynamics of barndoor skates illustrated a more rapid rebuilding estimate and suggested that the species may be more resilient to exploitation than previously believed. In addition, the consistent rise in biomass and large increase in size ranges, coupled with the management measures in other fisheries and the Skate FMP, support the continued rebuilding of barndoor skate stocks. The 2008-2010 NEFSC autumn average survey biomass index of 1.11 kg/tow is above the biomass threshold reference point (0.81 kg/tow) and thus, the species is not overfished but is not yet rebuilt to Bmsy. The 2008-2010 index is above the 2007-2009 index by 10 percent; therefore, overfishing is not occurring. Consequently, the information available to us since our 2009 decision to remove barndoor skate from the species of concern list, and that which is presented by the petitioners, does not indicate that the petitioned action for barndoor skates may be warranted.

The petitioners cite one study which they state linked the recent decline in smooth skate abundance with a decrease in water temperature (resulting from climate change), but note that no

corresponding recovery has been observed with an ensuing increase in water temperature. They state that this observation suggests that the smooth skate population may be adversely affected by climate change. For smooth skate, the 2008-2010 NEFSC autumn average biomass index of 0.16 kg/tow is above the biomass threshold reference point (0.145 kg/tow) and thus, the species is not overfished but is not yet rebuilt to Bmsy. The 2008-2010 index is above the 2007-2009 index by 22 percent; therefore, overfishing is not occurring. While the species may be impacted by climate change, the fact that it is not currently overfished, overfishing is not occurring, and the biomass is increasing, does not indicate that climate change or other factors are causing the species to be threatened or endangered. We conclude that the available information does not indicate that the petitioned action may be warranted for smooth skates.

For winter skate, the 2008-2010 NEFSC autumn average biomass index of 9.64 kg/tow is above both the biomass threshold reference point (2.80 kg/tow) and the Bmsy proxy (5.60 kg/tow), and thus, the species is not overfished and is above Bmsy. The 2008-2010 average index is above the 2007-2009 index by 18 percent; therefore, overfishing is not occurring. Given that the winter skate biomass indices exceed the biological reference point, this species is considered rebuilt, despite the occurrence of a directed fishery. The fact that the species has rebuilt under existing regulatory mechanisms does not support the petitioners claim that it is threatened or endangered due to direct and indirect exploitation or inadequacy of existing regulatory mechanisms for fishing. We conclude that the available information does not indicate that the petitioned action may be warranted for winter skates.

Conclusion

The use of groundfish trawling gear was posed by the petitioners as degrading benthic habitat structure and affecting the availability of the skate's prey as well as the skate's ability to avoid predators; however, current information was not presented, nor was it available in our files, to indicate that this gear is currently having significant impacts on the skates or will in the foreseeable future. Although the petitioners claim that overutilization of skates for commercial, recreational, scientific, or education purposes in the form of direct and indirect exploitation requires that the species be listed under the ESA, available information indicates that overfishing is not currently occurring in any of the skate species. The petitioners cite out of date data, but these data have since been updated and indicate that the skates are not in danger of extinction or likely to become endangered in the foreseeable future. In addition, available information on disease and predation on skates is limited, and the petitioners do not present substantial information indicating that the petitioned actions of listing the skates under the ESA due to disease or predation may be warranted at this time. Regarding inadequacy of existing regulatory mechanisms, the petitioners state that because the species-specific reporting requirements are not being enforced, the prohibition on landing and possessing barndoor and smooth skates is essentially meaningless. However, recent data show the prohibitions on barndoor and smooth skates have been estimated to be approximately 98 percent effective, and prohibited species occurred in only approximately 2 percent of landings from 2005-2010. In addition, current NMFS regulations have been adequate to prevent overfishing for all three skate species in the United States. With regards to other natural or manmade factors affecting the continued existence of barndoor, smooth and winter skates, the petitioners note that the life history characteristics of large skates make them especially vulnerable to exploitation as does climate

change. However, given the rapid rebuilding of the barndoor skate, the rebuilt population of the winter skate, and the lack of available information on climate impacts on smooth skate abundance, available information does not indicate that life history characteristics or climate change pose a significant threat to the skate species. Because we have concluded that the petitioned action to list barndoor, winter and/or smooth skates is not warranted, we do not need to designate critical habitat or consider the need to list other skate species on the basis of similarity of appearance, as requested by the petitioner.

Petition Finding

Based on the above information and the criteria specified in 50 CFR 424.14(b)(2), after reviewing the information contained in the petition and information readily available in our files, we conclude that the petition fails to present substantial scientific or commercial information indicating that the petitioned action concerning barndoor, smooth and/or winter skate may be warranted.

References Cited

A complete list of the references used in this finding is available upon request (see ADDRESSES).

Authority: 16 U.S.C. 1531 et seq.

Dated: December 14, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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